

FIRST EXTENSION OF LICENSE AGREEMENT

This First Extension of License Agreement ("First Extension") is made on October 15, 2020 by and between the University of Massachusetts Amherst ("University") and the Federation of Massachusetts Farmers Markets ("Licensee").

WHEREAS, University and Licensee entered into an Agreement for Use of Office Facilities at the UMass Waltham Center dated July 1, 2018, for the Premises at 240 Beaver Street in Waltham, Massachusetts ("Agreement").

WHEREAS, Sections 5 and 22 of the Agreement provide that the parties may mutually agree to modifications to the Agreement in writing.

WHEREAS, University and Licensee wish to modify the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, University and Licensee agree as follows:

1. Section 1 (REFERENCE DATA) of the Agreement shall be modified by inserting the following text on its own line after the words "Room 374": "*181 Presidents Drive*", into the Mailing Address of the University.
2. Section 1 (REFERENCE DATA) is hereby amended by adding room 124 to the Premises listing.
3. Section 5 (TERM): The term of the Agreement shall be extended through December 31, 2020.
4. Section 7 (FEE): In consideration of the rights granted to Licensee under the Agreement and this Extension, Licensee shall pay to the University a fee in the amount of Eight Thousand and 00/100 Dollars (\$8,000.00), payable in advance in monthly installments of Six Hundred Sixty-six Dollars and Sixty-seven cents (\$666.67) per month.
5. Except as modified hereby, all other parts of the Agreement are ratified, confirmed and approved and shall remain in full force and effect in accordance with its terms.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

UNIVERSITY:
UNIVERSITY OF MASSACHUSETTS

DocuSigned by:
By: Andrew P. Mangels
Name: Andrew P. Mangels
Title: Vice Chancellor for Administration and Finance

LICENSEE:
FEDERATION OF MASSACHUSETTS FARMERS MARKETS

By: Edith Murnane
Name: Edith ~~Murnane~~ MURNANE
Title: Executive Director

Agreement and Conditions for Use of Office Facilities at the UMass Waltham Center

This Agreement provides conditions for use of office space at the UMass Eastern Massachusetts Outreach Center. This agreement is between Federation of Massachusetts Farmers' Markets (hereinafter Licensee), and the University of Massachusetts (hereinafter referred to as the University).

WHEREAS, the University is the owner of certain real property located at 240 Beaver Street in Waltham and further described in Section 2 of this Agreement; and

WHEREAS, the University is responsible for the care, control and maintenance of said real property; and

WHEREAS, Licensee desires to enter upon said real property for the purposes described in this Agreement;

NOW, THEREFORE, the University hereby grants such entry and use subject to the following terms and conditions:

1. REFERENCE DATA:

Date of Agreement: July 31, 2018

Mailing Address of University:

Evan Pacosa
318D Stockbridge Hall
University of Massachusetts
Amherst, MA 01003

Mailing Address of Licensee:

Jeffery Cole, Executive Director
Federation of Massachusetts Farmers' Markets
240 Beaver Street
Waltham, MA 02453

Premises: Room # 123, 125, & 214 in the Main Administration Building

Permitted Use: Rooms to be used as an office to conduct FMFM business.

Term of Agreement: One Year

Consideration to be paid by Licensee: \$8,000.00

2. LOCATION OF THE PREMISES

Entry and use are limited to the premises located at See # 7 below.

3. PURPOSE AND USE

The rights of Licensee under this agreement shall be exercised solely for the following purposes: The farm land will be used to harvest, sell, and distribute food consistent with the mission of this organization. The direct sale of farm products will be limited to the normal seasonal hours of distribution of CSA farm shares to members. A portion of the produce will be provided to people in need of food assistance. The land is also used to for education for school and camp groups, as well as for the general public.

Specific rules governing access to and use of these facilities are attached as **Exhibit B** and are binding upon both parties.

4. CONDITION OF PREMISES

Licensee acknowledges and agrees that it accepts the Premises in "as is" condition, that Licensor is under no obligation to make any repairs, renovations, or alterations to the Premises, and that the University has made no representations or warranties regarding the fitness of the Premises for Licensee's intended purpose or use.

5. TERM

Term of Agreement: July 1, 2018 to June 30, 2019 unless otherwise terminated earlier in accordance with the terms of this Agreement.

The term of this Agreement may be extended on the following terms, subject to the prior written approval of the University: This Agreement will be reviewed annually on the anniversary date or date mutually agreeable to both parties.

This Agreement is revocable at any time upon thirty (30) days' written notice from either party to the other.

6. HOURS OF OPERATION

During the term of this Agreement, Licensee shall be permitted to operate and use the Premises for the purposes set forth in Section 3 and described in **Exhibit B**.

7. FEE

In consideration of the rights granted to Licensee under this agreement, Licensee shall pay the following Fee:

\$8,000 for use of Room # 123, 125, & 214 in the Main Administration Building.

8. PERMITS

This agreement and all obligations hereunder are specifically dependent upon the issuance to the Licensee of all permits and licenses required to operate and use the Premises for the purposes described in this Agreement from those governmental agencies having jurisdiction. It shall be the responsibility of Licensee to obtain any such permits or licenses, at Licensee's sole cost and expense. In the event Licensee is refused any such permit or license, this agreement shall be null and void with no further obligation by either party to perform. If any such permit or license is revoked or canceled during the term of this Agreement, it shall be cause for terminating this Agreement immediately as set forth in Section 18(c) hereof.

9. ALTERATION OF THE PREMISES

Licensee shall make no alterations or improvements upon the Premises except as may be specifically permitted in a separate Schedule attached to this License as **Exhibit C**. If no such Schedule is attached, Licensee shall not make any alterations or improvements upon the Premises after this Agreement has commenced unless Licensee has obtained the University's prior written approval, which may be withheld for any reason or for no reason in the University's sole discretion. Any alterations or improvements made by Licensee shall be made in accordance with the terms and conditions established by the University, which may include prior approval of plans, insurance coverage, and a requirement that Licensee remove any or all of its alterations or improvements upon the expiration or earlier termination of this Agreement. All such alterations or improvements remaining upon the Premises after the expiration of this License shall be subject to the provisions of Section 12 hereof. In any event, this Agreement does not for any purpose constitute the granting of an interest in real property and Licensee shall not have any right to make any permanent improvements to, or to install any permanent fixtures on, the Premises.

10. LICENSEE'S EQUIPMENT

Licensee may bring such vehicles and other equipment upon the premises as should ordinarily be used to operate and use the Premises for the purposes permitted by this Agreement, subject, however, to the following limitations outlined in **Exhibit B**.

11. UTILITIES

The University shall provide janitorial services for common areas of the buildings and general maintenance of the buildings and grounds. Heat, electric, water and sewer utilities are provided for the facilities as needed.

The University makes no representation as to the adequacy of utility systems for purposes of Licensee and shall not be responsible for any interruption in utility service.

12. CONDUCT OF LICENSEE

Non-interference with University Operations

Licensee shall at all times conduct itself so as not to interfere in any way with the operation of the University facility. Licensee agrees to observe and obey all directives given by duly designated personnel of the University.

Compliance with Laws

Licensee shall at all times operate within the premises in accordance with all applicable laws, statutes, ordinances, regulations, permits, licenses, and requirements of its insurance policies.

Repair of Damage

Licensee shall neither cause nor suffer any waste of the premises and shall maintain the premises in good order at all times. The Licensee's responsibilities shall include, but not be limited to, the repair of any and all damage or breakage resulting from acts of vandalism or the intentional or negligent acts of the Licensee or others, but excluding damage or breakage caused by employees, agents or invitees of the University. All repairs made by Licensee shall be performed in a manner satisfactory to the University.

Sanitation

Licensee shall maintain the Premises in a sanitary condition and shall follow all directions of the University with regard to the collection and disposal of refuse as provided in **Exhibit B**.

Security

Licensee shall be responsible for providing, at its sole cost and expense, such security protection or services as may be reasonably necessary to protect the premises and Licensee's invitees from injury or damage.

Cost of Operations

Except as otherwise expressly set forth in this Agreement, Licensee shall be responsible for any and all costs and expenses associated with the exercise of its rights under this Agreement and its operations upon the Premises.

Operations Limited to Permitted Uses

Licensee shall not conduct, nor permit any of its employees, agents or invitees to conduct, any operations or business upon the Premises except for that permitted by Section 3 of this Agreement.

Hazardous Materials

Without limiting any of Licensee's obligations under this or any other Section of this Agreement, Licensee agrees that it shall not cause any hazardous materials to be used, generated, stored or disposed of on, under or about, or transported to or from the premises. For the purposes of this Agreement, "hazardous materials" shall include, but not be limited to substances defined as "hazardous substances", "toxic substances", "hazardous wastes", "hazardous materials", or "oil" in any federal or state statute concerning hazardous materials now or hereafter enacted, including all regulations adopted or publications promulgated thereunder.

Licensee's involved in research and plant propagation may use licensed pesticides, subject to all regulations. Plans for use and storage must be approved annually by Robert Schrader.

Alcoholic Beverages

Unless specifically permitted by the terms of this Agreement, Licensee shall not serve alcoholic beverages upon the Premises, nor allow any of its employees, agents, contractors or invitees to bring or consume alcoholic beverages upon the Premises.

Surrender of Premises

Upon the expiration or earlier termination of this Agreement, Licensee shall immediately vacate and surrender the Premises to the University. However, if the expiration or termination takes place after the onset of the Licensee's farming season (January 1st) and is for anything other than a catastrophic event rendering the land unusable or due to misuse on the part of the Licensee, the Licensee shall be allowed to see their full growing season through to completion (Jan through December) before being required to vacate the Premises. Licensee shall also remove all of its property from the Premises and restore the Premises to the condition the Premises were in at the commencement of this Agreement, reasonable wear and tear excepted, and subject further to any obligation Licensee may have hereunder to make repairs or improvements to the Premises. Upon agreement of the parties, Licensee may abandon all or part of its property in place. In the event any of Licensee's personal property remains on the Premises after the expiration or earlier termination of this Agreement without a written agreement between the parties, said property shall be deemed abandoned and may be retained by University without any compensation to Licensee, or may be removed and either stored or disposed of by the University at the sole cost and expense of Licensee.

13. INDEMNIFICATION

Not Applicable

14. RISK OF LOSS

Licensee agrees that it shall use and occupy the Premises at its own risk, and the University shall not be liable to Licensee for any loss or damage to vehicles, equipment, fixtures, or other personal property of the Licensee that are brought upon the Premises. Without limiting the foregoing, the University shall have no liability to Licensee for any injury, loss or damage caused by any act of Licensee's invitees or members of the general public.

15. INSURANCE

The Licensee shall keep in force, at its sole cost and expense, during the full term of this License, and during such other times as Licensee occupies the Premises or any part thereof, the following insurance policies:

- A. Comprehensive public liability insurance in an amount as required by Massachusetts law.

- B. Vehicle Liability Insurance covering each vehicle of Licensee entering the Premises in an amount as required by Massachusetts law.
- C. Workers Compensation Insurance covering Licensee's employees upon the Premises in such amounts as are required by law.
- D. Such other types of insurance and in such amounts as the University may, from time to time, require in its reasonable judgment.

One or more certificates of insurance showing insurance coverage as required by this Section 15 are attached to this license as **Exhibit D**.

The insurance coverage required by this Section shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts. In the event Licensee fails to obtain any of the insurance coverage required by this section, or if any of the required insurance policies are canceled, it shall be grounds for immediate termination of this Agreement as provided in Section 18(c) of this agreement.

16. ASSIGNMENT

The Licensee shall not sell, assign, sublet, mortgage or transfer any interest in this Agreement or any part of the Premises without obtaining, in each instance, the prior written consent of the University, which consent may be withheld for any reason or for no reason, or granted upon such conditions as the University shall determine, all in its sole discretion.

17. RIGHTS OF UNIVERSITY AND AGENCY TO ENTER

The University reserves the right and the Licensee shall permit the University or its employees or agents to enter upon the Premises at any time to make repairs, perform maintenance, inspect the Premises, show the Premises to others, monitor compliance with this Agreement, or for any other reason.

18. TERMINATION

This Agreement shall expire on the date specified in Section 5, unless extended in compliance with the terms of this Agreement and all other requirements of law, or unless terminated earlier under the following conditions:

- A. Without Cause. Either Licensee or the University may terminate this Agreement by giving written notice to the other party at least thirty (30) calendar days prior to the effective date of termination stated in the notice.
- B. For Cause. If, in the opinion of University, Licensee fails to fulfill its obligations, The University may terminate this Agreement by giving written notice to the Licensee at least five (5) calendar days before the effective date of termination stated in the notice. The notice shall specify in reasonable detail the nature of Licensee's breach. The notice may also state a period

during which the breach may be cured by Licensee, provided that such period shall expire on or before the termination date stated in the notice. In the event the Licensee is given an opportunity to cure its breach (which shall be within the sole discretion of the University) and Licensee fails to complete such cure to the satisfaction of the University within the cure period, this Agreement shall come to an end on the termination date stated in the notice.

C. Emergency. In the event the University determines that it is necessary to terminate this Agreement or suspend Licensee's rights hereunder immediately in order to prevent injury or damage to persons or property, including the interest of the University in the Premises, the University may terminate this Agreement or suspend Licensee's rights hereunder by providing written notice to Licensee stating the grounds for said termination or suspension. Said notice may be given in the form of a telegram, mailgram, hand-carried letter, or other reasonable written means, and this License shall be terminated or suspended, as the case may be, upon delivery of said notice to Licensee.

In the event this Agreement is terminated in accordance with any of the provisions of this Section 18, this Agreement shall come to an end as fully and completely as if the term had expired on the date set forth in Section 5, and Licensee shall vacate and surrender the Premises as provided in Section 12.

In the event this Agreement is terminated by the University in accordance with any of the provisions of this Section 18, Licensee shall not be relieved of liability to the University for arrears in the License fees or for any other injury or damage sustained by the University as a result of a breach of Licensee of any of the terms or conditions of this Agreement, whether occurring before or after such termination. Licensee expressly waives any right to damages related to such termination, including incidental or consequential damages. If this Agreement is terminated for any reason that is not the fault of Licensee, then the fee which the Licensee has covenanted to pay, if any, shall be commensurately reduced by the University on a pro rata per diem basis, and Licensee shall receive a refund of any portion of the Agreement Fee that has been prepaid for a period during which the Licensee was denied use and occupancy of the Premises.

19. NO ESTATE CREATED

This Agreement shall not be construed as creating or vesting in Licensee any estate in the Premises, but only the limited right of possession as herein described, and Licensee shall have no right to require specific performance of the obligation of the University hereunder.

20. NON-DISCRIMINATION

Licensee shall not discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Licensee, nor shall Licensee deny any person access to the Premises or to any activities or programs carried out pursuant to this Agreement because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. The Licensee shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in

employment.

21. NOTICE

All notices or other communications required or permitted to be given under this Agreement shall, unless otherwise expressly permitted hereunder, be in writing signed by a duly authorized representative of the party giving the notice and shall be given by hand delivery (including, without limitation, courier, Federal Express, or other overnight delivery service) or mailed by United States certified mail, postage prepaid, return receipt requested. Such notices shall be sent or addressed to the University and Licensee at the addresses set forth in Section 1.

22. MISCELLANEOUS PROVISIONS

This Agreement may not be modified except in writing, duly executed by both parties.

This Agreement contains the entire agreement of the parties and there are no other agreements or understandings between the parties regarding the subject matter of this Agreement.

The University, its employees, officers or agents, are not authorized to bind or involve the Licensee or the Commonwealth of Massachusetts in any contract or to incur any liability for or on the part of the Licensee or the Commonwealth of Massachusetts.

If any portion of this Agreement is declared to be illegal, unenforceable or void, then all parties to this Agreement shall be relieved of all obligations under that portion; provided, however, that the remainder of this agreement shall be enforced to the fullest extent permitted by law.

No consent or waiver, whether express or implied, by the University to or of any breach of the terms of this Agreement by Licensee shall be construed as a consent or waiver to or of any other breach. No waiver of any breach or default or other indulgence shall be effective unless expressed in writing by the University.

The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

No official, employee or consultant of the Commonwealth of Massachusetts (including any Trustee of the University of Massachusetts) shall be personally liable to Licensee or to any person claiming under or through Licensee for or on account of any alleged breach of this Agreement, or for any act, failure to act or other matter arising out of the execution of this Agreement or the performance of Licensee's obligations hereunder.

This Agreement shall be governed by, and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this Agreement shall be brought in courts within the Commonwealth of Massachusetts.

No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing and is signed by the party to be charged.

This Agreement is to take effect as a sealed instrument.

The following exhibits and attachments are made a part of this Agreement for all purposes:

 Exhibit A - Plan or Diagram of Premises to be Utilized by Licensee
 X Exhibit B - Specific Rules Governing Access and Use of Facility
 Exhibit C - Schedule of Permitted Alterations and Improvements
 X Exhibit D - Insurance Certificate(s)

AGREED AND ACCEPTED

**UNIVERSITY OF
MASSACHUSETTS:**

LICENSEE:

Signature

Joe Shoenfeld, Associate Director
Center for Agriculture, Food and the
Environment
University of Massachusetts

Authorized Signature

Jeffery Cole, Executive Director
Federation of Massachusetts Farmers'
Markets

Date

Date